

1 E. MARTIN ESTRADA
United States Attorney
2 MACK E. JENKINS
Assistant United States Attorney
3 Chief, Criminal Division
SARAH S. LEE (Cal. Bar No. 311480)
4 Assistant United States Attorney
General Crimes Section
5 1200 United States Courthouse
312 North Spring Street
6 Los Angeles, California 90012
Telephone: (213) 894-7407
7 Facsimile: (213) 894-0141
E-mail: sarah.lee@usdoj.gov

8 Attorneys for Plaintiff
9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 GARY DAVID GOULIN,

16 Defendant.

No. 2:22-cr-00476-MEMF

GOVERNMENT'S SENTENCING POSITION

Hearing Date: October 13, 2023

Hearing Time: 10:00 a.m.

Location: Courtroom of the
Hon. Maame Ewusi-
Mensah Frimpong

17
18 Plaintiff United States of America, by and through its counsel
19 of record, the United States Attorney for the Central District of
20 California and Assistant United States Attorney Sarah S. Lee, hereby
21 files its Sentencing Position.

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1 This Sentencing Position is based upon the attached memorandum
2 of points and authorities, the files and records in this case, the
3 Presentence Report, the sentence recommendation letter, and such
4 further evidence and argument as the Court may wish to consider at
5 the time of sentencing. The United States reserves the right to file
6 a reply brief prior to sentencing.

7 Dated: September 29, 2023

Respectfully submitted,

8 E. MARTIN ESTRADA
 United States Attorney

9 MACK E. JENKINS
10 Assistant United States Attorney
11 Chief, Criminal Division

12 /s/
13 SARAH S. LEE
 Assistant United States Attorney

14 Attorneys for Plaintiff
15 UNITED STATES OF AMERICA
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MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

Defendant Gary David Goulin ("defendant") was charged in a two-count indictment charging receipt of child pornography in violation of 18 U.S.C. §§ 2252A(a)(2)(A), (b)(1), and possession of child pornography in violation of 18 U.S.C. §§ 2252A(a)(5)(B), (b)(2). On April 26, 2023, defendant pleaded guilty to count two for possession of child pornography. Defendant pleaded guilty pursuant to a plea agreement in which defendant and the government agreed to a range of imprisonment, 48 to 60 months, under Federal Rule of Criminal Procedure 11(c)(1)(C). (Dkt. 27 ("Plea Agreement")). The range is a downward variance from the Sentencing Guidelines range of 78-97 months.

Defendant now awaits sentencing, and the government recommends a term of imprisonment at the high-end of the agreed-upon range: 60 months. The government also requests the Court impose a fifteen-year period of supervised release, a fine of \$25,000, a \$100 mandatory special assessment, an additional \$5,000 special assessment under the Victims of Trafficking Act of 2015, and an additional special assessment of \$17,000 under the Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, 18 U.S.C. 2259A(a)(1).¹

¹The Probation Office's recommendation letter, (Dkt. 32), omits the additional \$17,000 assessment provided for by 18 U.S.C. § 2259A(a)(1). But the Probation Officer has indicated to government counsel that the omission was inadvertent and the letter will be amended to recommend the assessment prior to sentencing. The government believes this additional assessment is appropriate and defendant has agreed to this additional assessment in his plea agreement. (Plea Agreement ¶ 21.)

1 **II. STATEMENT OF FACTS**

2 Defendant's conduct is egregious. Based on a tip from Dropbox
 3 that defendant was uploading child pornography, the Los Angeles
 4 Police Department executed a search warrant at defendant's house on
 5 November 4, 2021. Inside his house, defendant possessed 61 DVDs
 6 containing child pornography, with an average run time of 3 hours and
 7 21 minutes per DVD. (Dkt. 33 ("PSR") ¶¶ 15-16.) In other words,
 8 defendant possessed approximately 204 hours of child pornography.
 9 Defendant also used his cell phone to download child pornography.
 10 (PSR ¶ 17.)

11 Among these materials, defendant possessed multiple child
 12 pornography images and videos depicting prepubescent minors, who had
 13 not attained 12 years of age, as well as images and videos depicting
 14 minors engaging in sadistic or masochistic conduct. (PSR ¶ 18.) For
 15 example, the materials included images of prepubescent minors being
 16 anally penetrated by adults, and images of prepubescent minors being
 17 manually masturbated by adults. (PSR ¶ 20.)

18 During the time period when defendant received and possessed the
 19 204 hours of child pornography images and videos, including materials
 20 depicting minors engaging in sadistic or masochistic conduct,
 21 defendant was a pediatrician in a hospital in Los Angeles. (PSR ¶¶
 22 21, 68.)

23 **III. THE COURT SHOULD SENTENCE DEFENDANT TO 60 MONTHS IMPRISONMENT**

24 **A. Guideline Calculations and The Plea Agreement**

25 In the plea agreement, the parties agreed to the following
 26 offense level and specific offense characteristics:

27 Base Offense Level: 18 U.S.S.G. § 2G2.2(a)(1)
 28

Material Involving a Prepubescent Minor:	+2	U.S.S.G. § 2G2.2 (b) (2)
Sadomasochistic Images:	+4	U.S.S.G. § 2G2.2 (b) (4) (A)
Use of Computer:	+2	U.S.S.G. § 2G2.2 (b) (6)
600 or more Images:	+5	U.S.S.G. § 2G2.2 (b) (7) (D)

Adjusted Offense Level: 31

(Plea Agreement ¶ 19.)

The PSR agreed with the calculation of the offense level set forth in the plea agreement. (PSR ¶¶ 28-41.) With a three-level decrease for acceptance of responsibility, defendant's total offense level is 28. (PSR ¶¶ 43-45.)

The PSR determined that defendant's criminal history category is I (PSR ¶ 52), with which the government agrees. Accordingly, the government submits that defendant's Sentencing Guideline range is 78 to 97 months. For the reasons explained further below, the government recommends a below-Guidelines sentence of 60 months imprisonment.

B. The Nature and Circumstances of Defendant's Offense and His History and Characteristics

The nature and circumstances of defendant's offense, as well as his history and characteristics, warrant the government's recommended sentence of 60 months' imprisonment. See 18 U.S.C. § 3553(a)(1).

Defendant's conduct is serious. Defendant received and possessed a large collection of child pornography materials -- over 204 hours of videos and images. At the same time that he possessed these materials, he was entrusted with caring for children as a pediatrician at a hospital. As the Probation Office noted, despite knowing the harm resulting from his crime to children, defendant

1 "still financially contributed to these industries that victimized
2 the same children he was meant to be helping." (Dkt. 32 at 8.)

3 The materials defendant possessed and received were horrific.
4 They included images and videos of children, including prepubescent
5 children. And they included images and videos of children engaged in
6 sadistic or masochistic conduct, such as penetration. Unfortunately,
7 as is often the case for child pornography crimes, the victims remain
8 nameless because the government has not been able to identify any of
9 the victims. This conduct merits a significant period of
10 incarceration.

11 There are, however, mitigating factors that warrant a downward
12 departure. As an initial matter, defendant promptly accepted
13 responsibility for the offense. In addition, this is defendant's
14 first criminal conviction at 62 years of age.

15 On balance, therefore, defendant's history and characteristics
16 and the nature and circumstances of his offense warrant the
17 recommended sentence.

18 **C. Need To Reflect Seriousness Of Offense; Promote Respect For**
19 **The Law; Provide Just Punishment; Afford Adequate**
Deterrence; And Protect The Public From Further Crimes

20 The sentence must satisfy the need to punish defendant, as well
21 as society's need to reflect the seriousness of the offense; promote
22 respect for the law; provide just punishment; afford adequate
23 deterrence; and protect the public. 18 U.S.C. § 3553(a)(2). Those
24 objectives justify the government's recommended sentence of 60
25 months' imprisonment. Defendant's conduct must be deterred, as such
26 conduct harms the most vulnerable members of society. Any lower
27 sentence would minimize the seriousness of this conduct. Thus, a
28 significant period of incarceration is warranted to promote respect

1 for the law, provide just punishment, deter defendant, and protect
2 the public from further crimes.

3 **D. The Court Should Impose a Fifteen-Year Period of Supervised**
4 **Release**

5 As defendant agreed to in the plea agreement, the government
6 recommends a fifteen-year period of supervised release. Congress has
7 recognized the importance of supervised release in the rehabilitation
8 of sex offenders, as evidenced by the five-year statutory minimum and
9 lifetime statutory maximum terms provided by 18 U.S.C. § 3583(k).
10 The same provision also provides for at least five years'
11 imprisonment -- a particularly severe sanction -- for those
12 individuals who violate the terms of their supervised release by
13 committing an additional sex offense. Id. And, as expressed by the
14 Supreme Court, "[t]he risk of recidivism posed by sex offenders is
15 frightening and high." Smith v. Doe, 538 U.S. 84, 103 (2003)
16 (internal quotation marks omitted); see also McKune v. Lile, 536 U.S.
17 24, 33 (2002) ("When convicted sex offenders reenter society, they
18 are much more likely than any other type of offender to be rearrested
19 for a new rape or sexual assault."). Given the concerns with sex
20 offender recidivism embodied in the law, a fifteen-year period of
21 supervised release would properly afford defendant the monitoring and
22 treatment necessary to prevent future criminal conduct.

23 **E. The Court Should Impose an Additional Special Assessment**
24 **\$5,000, an Additional Special Assessment of \$17,000, and a**
25 **Fine of \$25,000**

26 In addition to the \$100 mandatory special assessment that
27 applies in all cases, defendant has agreed to an additional \$5,000
28 special assessment, an additional \$17,000 special assessment, and a

1 \$25,000 fine. (Plea Agreement ¶ 21.) The Court should impose these
2 special assessments and fine.

3 The Justice for Trafficking Victims Act requires the Court to
4 impose a \$5,000 assessment upon any non-indigent person who commits a
5 crime related to the sexual exploitation of children after its
6 enactment date. 18 U.S.C. § 3014. This applies to defendant as the
7 Probation Office has found defendant is not indigent. (PSR ¶¶ 87-95,
8 105.) Defendant is also subject to an additional \$17,000 assessment
9 under the Amy, Vicky, and Andy Child Pornography Victim Assistance
10 Act of 2018, 18 U.S.C. 2259A(a)(1), which provides for an assessment
11 up to \$17,000 on any person convicted of an offense under 18 U.S.C. §
12 2252A(a)(5). (PSR ¶ 106.) Further, defendant has the ability to pay
13 the \$25,000 fine. (PSR ¶¶ 89-94.) Accordingly, these monetary
14 obligations are appropriate.

15 **IV. CONCLUSION**

16 For the foregoing reasons, the government respectfully requests
17 that this Court sentence defendant to 60 months' incarceration, a
18 fifteen-year period of supervised release, a fine of \$25,000, a \$100
19 mandatory special assessment, an additional \$5,000 special assessment
20 under the Victims of Trafficking Act of 2015, and an additional
21 \$17,000 assessment under the Amy, Vicky, and Andy Child Pornography
22 Victim Assistance Act of 2018.